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Mr. Klarreich graduated with a J.D. from St. John's University School of Law in 1968, where he ranked fifth in a class of 210 and was a member of Law Review. He graduated from the City College of the City of New York in 1965. He is admitted to the New York Bar and is admitted to practice before the District Courts for the Eastern and Southern Districts of New York, the U.S. Court of Appeals for the Second Circuit and the U.S. Supreme Court.



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Mr. Singer also conducts training seminars for supervisory and managerial employees on equal employment laws and sexual harassment and is frequently asked to speak on such matters at corporate sponsored programs and seminars.

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## Workplace or House of Worship?

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## Employment Notes



# Workplace or House of Worship?

Federal, New York State and New York City laws prohibit discrimination by employers against employees based upon an employee's religious observances or practices. Employers are required to reasonably accommodate their employees' various religious observances and practices to the extent that the accommodation will not impose an undue hardship on the employer.

To qualify for an accommodation however, an observance or practice must be based on a belief that is both religious and sincerely held. This article examines the sometimes sensitive issue of whether an employee has a sincere religious belief necessitating employer accommodation.

What is an employer to do if an employee claims to be an adherent to a Vulcan religion and needs days off to attend a Trekkie convention? How should an employer deal with an employee who demands to wear a large patch over his uniform that reads, "Jesus Is Lord?" A recent situation encountered by our firm involved the complaint of an employee whose national origin was Indian. The employee claimed to adhere to the strict caste system of India, which prevents members of certain castes from performing certain tasks. The employee worked as a janitor and was responsible to clean the bathrooms in a facility. The employee, however, refused to clean the toilets based upon his alleged place in India's caste system. The employee could not then fulfill his job obligations. These scenarios present situations in which both the sincerity of the belief asserted is at question as well as whether the belief itself is inherently religious. Developing a strategy to resolve these situations requires an understanding of how courts evaluate an individual's alleged religious belief.

In determining whether a particular belief is a sincerely held religious belief, courts do not delve into the verity of a particular belief system. Rather, courts concentrate on an adherent's sincerity to his own belief system in order to "differentiat[e] between those beliefs that are held as a matter of conscience and those that are animated by motives of deception and fraud." Courts may be unwilling to recognize beliefs that are merely political in nature and not based on faith, but generally, the standard regarding what constitutes a religion is rather easy to fulfill. This means that even those belief systems that seem most foreign or dissimilar to a major religion should not be dismissed by an employer without consideration.

A key factor in a court's assessment is the credibility of the employee. Credibility is typically assessed by an examination of all of the facts surrounding the employee's claim. A court will typically look at the consistency of an employee's belief and the employee's statements about his or her own beliefs. Overnight conversions and immediate demands for accommodations are generally not highly regarded by the courts.

Employers should also recognize that the practices for which an employee seeks an accommodation need not necessarily be a formally required tenet of the employee's religion. Teaching bible classes and attending monthly church meetings, while not necessarily dictates of a religion, have been found to be religious practices worthy of an employer accommodation. Voluntary social functions, however, have been held to fall outside of the scope of activities that necessitate an employer accommodation. As long as a belief amounts to something more than merely a personal preference, employers need to consider that an accommodation may be necessary.

Workplace proselytizing is another delicate situation often facing employers. An employee who abides by his or her religious tenets while at work may cross the line of acceptability if the employee is intent on pushing those beliefs on other employees or even company clients. The current law is not intended to allow employees to push their values on others. Nevertheless, even those situations that an employer may see as unworthy of an accommodation should be given some thought. The fact that an employer has at least offered an accommodation to an employee may likely shed favorable light on the employer in the event of a lawsuit.

In the case of the employee who refused to remove a large patch reading "Jesus Is Lord," a New York federal court declined to grant summary judgment for the employer where it was unclear whether the employer had made any effort at defusing the situation by offering an accommodation. The employee was an evangelical Christian working as a courier for a package delivery service and he insisted on wearing the very noticeable patch both in the home facility as well as while on deliveries to outside offices. Noting that the statute, "protects more than... practices specifically mandated by an employee's religion," the court put great weight on the employee's own statement that he felt compelled to wear the patch pursuant to his sincerely held religious belief.

The prospect of being forced to deal with delicate situations involving employees and religion is unappealing to any employer. It is important to recognize that the laws protect a very wide range of belief systems yet employees do not have the right to take liberties simply by hiding behind the cloak of religion. Employers can best protect themselves by implementing procedures and instructing employees in management positions on how to deal with these situations before they arise.